

Exhibit 39

1
2 UNITED STATES DISTRICT COURT

3 DISTRICT OF NEW JERSEY

4 CIVIL ACTION NO. 2:16-cv-06576

5 -----x

6 INDUSTRIA DE ALIMENTOS ZENU S.A.S.,

7 Plaintiff,

8 -against-

9 LATINFOOD U.S. CORP. d/b/a ZENU

10 PRODUCTS CO. and WILSON ZULUAGA,

11 Defendant/Counter Plaintiff,

12 -----x

13 LATINFOOD U.S. CORP. d/b/a ZENU

14 PRODUCTS CO.,

15 Defendant/Counter Plaintiff,

16 -against-

17 INDUSTRIA DE ALIMENTOS ZENU S.A.S. and

18 CORDIALSA, USA, INC.,

19 Counter Defendants.

20 -----x

21
22 April 11, 2019

23 10:10 a.m.

24 Confidential Deposition of LUIS SALAZAR

1 L. Salazar

2 Q. And what about after 2012?

3 A. I was named manager of marketing.

4 Q. Is that your current position?

5 A. In 2015 they gave me marketing, sales
6 and investigation, development investigations,
7 development.

8 Q. Did you have the same title at
9 Industria since 2012?

10 A. 2012 I was manager of marketing,
11 commercial manager.

12 Q. When did you become commercial
13 manager?

14 A. 2015.

15 Q. And is that your current title?

16 A. Yes.

17 Q. What are your job responsibilities as
18 commercial manager?

19 A. Sales responsibilities, marketing and
20 research development.

21 Q. What is the business address of the
22 company?

23 A. We have many locations in Columbia.

24 Q. What is your location?

25 A. I have many offices. I have to look

1 L. Salazar

2 at one of their offices.

3 Q. You move around from different offices
4 there?

5 A. And different cities.

6 Q. Are you personally involved in all
7 aspects of the marketing and sales of Zenu
8 Ranchera branded products in Columbia?

9 A. Yes, sir.

10 Q. Anywhere else?

11 A. At this moment the company is in
12 Columbia. I am the one responsible.

13 MR. INGBER: I am going to ask you to
14 speak up a little. My hearing is not that
15 great.

16 Q. But are the Ranchera Zenu products
17 just marketed in Columbia?

18 A. Today marketed the products are there.
19 Marketed the brand is registered in other
20 companies.

21 Q. I am talking about sales.

22 MR. RAYMOND: What is your question
23 about sales?

24 Q. Are your sales and marketing strictly
25 limited to the Colombian market in Columbia?

1 L. Salazar

2 MR. RAYMOND: I am going to object to
3 the form.

4 Can you break that into two because it
5 is two different questions sales and
6 marketing?

7 Q. Is your marketing of Zenu and Ranchera
8 brand products limited to the country of Columbia?

9 A. No. We have -- marketing we do it for
10 different international channels of television and
11 digital.

12 Q. Is the Zenu and Ranchera brand goods
13 only sold in Columbia?

14 A. Now yes.

15 Q. Has it always been sold -- strike
16 that.

17 Have the Ranchera and Zenu brand goods
18 to date only been sold in Columbia?

19 A. Today only sales in Columbia.

20 Q. So you have never -- is it true that
21 Industria has never sold Zenu and Ranchera branded
22 goods outside of Columbia?

23 A. Industria haven't sold out of
24 Columbia.

25 Q. How about Nutresa?

1 L. Salazar

2 THE WITNESS: I don't know.

3 A. I don't know.

4 Q. Do you speak English?

5 A. Very little.

6 Q. Do you understand English?

7 A. More or less.

8 Q. Do you understand the questions that I
9 am asking in English without translation?

10 A. Not completely.

11 Q. Do your duties as commercial manager
12 require international travel?

13 A. Yes. We have operations in three
14 countries with different brands.

15 Q. Which countries?

16 A. Panama, Venezuela and Columbia.

17 Q. Not the US?

18 A. Not now.

19 Q. Have you been to the US before?

20 A. Yes.

21 Q. How many times?

22 A. I don't recall. With the family many
23 times.

24 Q. On vacation?

25 A. Yes.

1 L. Salazar

2 Q. Is this your first time here for
3 business?

4 A. Yes.

5 Q. When was the first time you came to
6 the US on personal travel?

7 MR. RAYMOND: Is there some relevance
8 to this to this lawsuit?

9 Q. Answer the question.

10 A. I don't recall exactly 1995, 1996.

11 Q. What type of company is Industria?

12 MR. RAYMOND: Object to the form.

13 You mean the corporate structure?

14 What do you mean by that?

15 MR. INGBER: I will rephrase that.

16 BY MR. INGBER:

17 Q. What type of business is Industria; is
18 it a meat producer?

19 A. It is in the food business. Meats is
20 one of the most important and also it produces
21 vegetables, cans and frozen dishes, meat.

22 MR. INGBER: I need a moment.

23 (Recess taken.)

24 MR. INGBER: I am sorry Mr. Salazar.

25 I am sorry that we are having this little

1 L. Salazar

2 mixup. It has nothing to do with you. I
3 appreciate you and your time and your
4 courtesy and we are trying to get you in and
5 out as quickly as possible.

6 THE WITNESS: Perfect.

7 BY MR. INGBER:

8 Q. Are you an officer at Industria?

9 A. Don't understand.

10 What is an officer?

11 Q. Are you a president or a
12 vice-president or a secretary of the company?

13 A. I am the commercial manager.

14 Q. Do you sign documents on behalf of
15 Industria?

16 A. Yes.

17 Q. Who is the president of the meat
18 business at Industria?

19 A. Diego Medina.

20 Q. How long has he been at Industria?

21 A. Many years but I don't know exactly.

22 Q. Before you started working at
23 Industria?

24 A. No.

25 Q. Is he your boss?

1 L. Salazar

2 A. Yes.

3 Q. Who is the director of Industria
4 supply chain?

5 A. Santiago Jimenez.

6 Q. Is he your boss too?

7 A. No.

8 Q. Who do you report to at Industria?

9 A. Diego Medina.

10 Q. Do you have a planning manager at
11 Industria?

12 A. There is a planning manager at
13 Industria.

14 Q. Who is that?

15 A. Mateo Betancur.

16 Q. Do you have a person at Industria that
17 is in charge of branding, like trademark branding?

18 THE INTERPRETER: Repeat the question
19 again please?

20 (Record read.)

21 A. There are different bosses for the
22 brand.

23 THE WITNESS: Different brands.

24 Q. Who is in charge of branding at
25 Industria in connection with Zenu and Ranchera?

1 L. Salazar

2 A. I am the boss of the two and I have
3 people that help me with them.

4 Q. So you Mr. Salazar are in charge of
5 branding of Zenu and Ranchera products for
6 Industria; is that correct?

7 A. I am the one responsible for Zenu and
8 Ranchera and other brands at Industria, the meats.

9 Q. How about the beans?

10 A. Zenu brand they also are my
11 responsibility.

12 Q. What products are sold under the Zenu
13 brand in Columbia?

14 A. Meat products, canned vegetables,
15 frozen dishes.

16 Q. Did you say frozen what?

17 A. Frozen dishes.

18 Q. How long have you been in charge of
19 branding of the Zenu and Ranchera products for
20 Industria?

21 A. Since 2013.

22 Q. Did you take over from somebody else?

23 A. Yes.

24 Q. Who was that?

25 A. Matias Gaviria.

1 L. Salazar

2 Q. Mateo Betancur?

3 A. No.

4 Q. Could you spell that?

5 A. M-A-T-I-A-S G-A-V-I-R-I-A.

6 Q. Is he still with Industria?

7 A. No.

8 Q. Is he still with Nutresa?

9 A. No.

10 Q. He doesn't work for the company
11 anymore?

12 A. Doesn't work for the company anymore.

13 Q. Do you know where he is now?

14 A. I don't know.

15 Q. Do you know if he is retired?

16 A. Don't know.

17 Q. Are you familiar with the history of
18 the Zenu Ranchera branded goods?

19 A. Yes.

20 Q. How long have those branded goods been
21 sold in Columbia?

22 A. Zenu sold for more than 60 years.
23 Ranchera more than 30?

24 Q. Do you know where the Zenu and
25 Ranchera branded products are manufactured?

1 L. Salazar

2 A. The majority in Columbia. Some of
3 them in the United States and others in Spain.

4 Q. Have you ever been to any of the US
5 manufacturing plants for the Zenu and Ranchera
6 branded goods?

7 A. No.

8 Q. How about in Spain?

9 A. No.

10 Q. How about in Columbia?

11 A. Yes.

12 MR. INGBER: Please mark as LS Exhibit
13 B, it is the amended complaint and jury
14 demand in this case dated April 21, 2017.

15 (LS Exhibit B, amended complaint and
16 jury demand in this case dated April 21,
17 2017, marked for identification, as of this
18 date.)

19 Q. Are you familiar with this document?

20 A. Yes.

21 Q. Do you know what this document is?

22 A. I know the general topics.

23 Q. What do you understand this to be?

24 A. The document from the lawsuit, from
25 the court.

1 L. Salazar

2 Q. When did you become aware of this
3 lawsuit?

4 A. This one in particular? Can you make
5 me understand the question better?

6 Q. This one in particular.

7 A. The exact date? I don't know. I know
8 that would be in this process for several years.

9 Q. When did you first become aware of a
10 dispute with Latinfood?

11 A. We found out about the assistance of
12 Latinfoods through the complaint of the person who
13 was selling the products in Miami.

14 Q. We will get to that.

15 Are you familiar with the preservation
16 of a policy for the preservation of documents for
17 a litigation?

18 MR. RAYMOND: Object to the form.

19 A. Should I answer?

20 Q. Sure.

21 A. Yes.

22 Q. So have you been as representative of
23 Industria maintaining the records of the company
24 since the beginning of this dispute?

25 MR. RAYMOND: I object to the form.

1 L. Salazar

2 You can answer.

3 A. The documents are preserved.

4 Q. Are you the person at Industria that's
5 responsible for the preservation of documents in
6 this lawsuit?

7 MR. RAYMOND: I object to the form. I
8 don't know what you mean by responsible for
9 preservation.

10 Q. Are you the custodian at Industria
11 responsible for the preservation of documents in
12 this case?

13 MR. RAYMOND: Again, I object to the
14 form.

15 What do you mean by custodian; does he
16 personally hold the documents?

17 Q. Do you understand? Can you answer the
18 question?

19 A. The documents are stored in safe
20 places by the company. I am not the one who save
21 them.

22 Q. That's what I want to know.

23 Who is the one at Industria that is
24 responsible for saving the documents?

25 MR. RAYMOND: Object to the form. He

1 L. Salazar

2 about that.

3 MR. RAYMOND: He testified about it at
4 least twice in the last half an hour.

5 BY MR. INGBER:

6 Q. So are you saying that -- your
7 attorney has just stated that and maybe I missed
8 this previously, that Industria became aware of
9 Latinfood's use of the Zenu brand product prior to
10 October 2013; is that correct?

11 MR. RAYMOND: I didn't testify --
12 excuse me. I didn't testify to anything.
13 What I said is that he testified that
14 Gloria's report came in before October 2013
15 is what he said.

16 MR. INGBER: Okay.

17 BY MR. INGBER:

18 Q. So Gloria's report came in before
19 October of 2013; is that correct?

20 A. I have already said I do not remember
21 the date.

22 Q. I understand, but was it before
23 October of 2013?

24 A. I don't remember.

25 Q. In paragraph 64 it says that a

1 L. Salazar

2 supplier contacted Industria to alert it of
3 Latinfood's activity.

4 Who was the supplier?

5 A. Marquillas.

6 Q. Marquillas is a supplier of Industria?

7 A. I do not work with the suppliers, no.

8 Q. Who works with the suppliers?

9 A. Santiago Jimenez.

10 Q. Do you know if Mr. Jimenez was alerted
11 to Marquillas's complaint?

12 A. I don't know if he was alerted
13 directly.

14 Q. Have you ever spoken to Mr. Jimenez
15 about what happened with Marquillas?

16 A. We have talked directly to our
17 attorneys.

18 Q. Did you speak with Mr. Jimenez about
19 this personally?

20 A. No.

21 MR. RAYMOND: Mark, just to clarify
22 one point, I was just handed a note saying
23 that in an e-mail that we sent you on
24 January 28 of this year we notified you we
25 had researched it and determined that

1 L. Salazar

2 Gloria's report was made on September 11,
3 2014.

4 Q. Do you know if there is a report by
5 Marquillas?

6 A. I know the information that was
7 provided to the attorneys.

8 Q. Is it accurate to say that then
9 looking at paragraph 64 in the complaint that
10 Industria was unaware of Latinfood's use of the
11 Zenu mark in the US until in or around October
12 2013 when Marquillas contacted Industria?

13 A. I am not very clear on what the
14 question is.

15 MR. INGBER: Could you repeat the
16 question?

17 (Record read.)

18 A. I did not know before. I did not
19 know.

20 Q. But Industria knew; is that correct?

21 MR. RAYMOND: I am sorry.

22 Industria knew what?

23 Q. Industria became aware of Latinfood's
24 use of the Zenu mark in the US in October of 2013
25 when Marquillas contacted Industria to inform them

1 L. Salazar

2 A. No.

3 Q. Are you aware that Industria as of
4 today has a registration for Zenu in the US?

5 A. Everything is in our attorney's hands.

6 Q. But are you aware of it?

7 A. I know we are in the process of
8 obtaining the brand.

9 Q. Do you know if there were any errors
10 in connection with this registration by any
11 chance?

12 A. I don't know.

13 Q. Do you know if this registration is
14 about to be revoked?

15 A. I know our attorneys are handling the
16 situation.

17 Q. Is there somebody at Industria that's
18 not an attorney that's familiar with this
19 registration?

20 A. I don't know.

21 Q. What's the name of the president of
22 Industria?

23 A. Diego Medina.

24 Q. Do you know if he is aware of this
25 registration?

1 L. Salazar

2 A. No, I don't know.

3 Q. How about Santiago Jimenez?

4 A. I don't know.

5 Q. Do you know if Industria ever had any
6 direct discussions with Latinfood's business
7 customers regarding sales of Latinfood's products?

8 MR. RAYMOND: I am sorry.

9 Could you read that back again?

10 (Record read.)

11 A. No.

12 Q. Did Industria ever have any
13 discussions with any customers regarding their
14 complaints or concerns about Latinfood's products?

15 A. Yes.

16 Q. Which customers?

17 A. Gloria Moreno. There is a chat on a
18 website, it's Juana Solorzano, where they talk
19 about the confusion with US products but they do
20 not mention Latinfoods. It is on Facebook.

21 Q. Who manages this chat on behalf of
22 Industria?

23 A. It is not an Industria chat. It is a
24 women's chat on Facebook.

25 Q. Do you keep track of this chat?

1 L. Salazar

2 A. Not me personally.

3 Q. Who does?

4 A. Our advertising agency, they track
5 social media.

6 Q. And is that D & B?

7 A. Yes.

8 Q. DDB?

9 A. Yes.

10 MR. RAYMOND: We produced a copy of
11 that for you.

12 MR. INGBER: A copy of?

13 MR. RAYMOND: The Facebook chat and
14 the translation as well.

15 BY MR. INGBER:

16 Q. Going back to LS B paragraph 7 page 3,
17 Industria is making a claim that Latinfood by and
18 through Mr. Zuluaga has fraudulently registered
19 the Zenu mark in the US.

20 Are you familiar with this claim?

21 A. Yes.

22 Q. So you agree with this?

23 A. There is a confusion with the
24 packaging of our products and the handling of the
25 brand.

1 L. Salazar

2 Q. Can you point to any confusion in the
3 US besides Gloria Moreno?

4 A. I mentioned Juana Solorzano.

5 Q. This is the chat reference, is that
6 what you are talking about?

7 A. Yes.

8 Q. Where is this -- the people in this
9 chat, are they Columbians who live in America, do
10 you know?

11 A. They live in different areas.

12 Q. Do you know if any of them live in the
13 US?

14 A. The chat references this. The people
15 that live in the United States it is their
16 concern.

17 Q. But they don't mention Latinfood in
18 their concerns, do they?

19 A. They mention the brands and the
20 products.

21 Q. Again, they don't mention Latinfood,
22 do they?

23 MR. RAYMOND: By name you are asking?

24 MR. INGBER: By name.

25 A. No.

1 L. Salazar

2 the US use the Zenu or Ranchera marks?

3 A. I don't know.

4 Q. Do you know if there has been any
5 surveys conducted by Industria regarding Zenu and
6 Ranchera in the US?

7 A. No surveys but market analysis, global
8 market analysis.

9 Q. Do you know if there is any market
10 analysis specific to the United States?

11 A. No. Just general analysis.

12 Q. Do you know what Industria's annual
13 sales of Zenu Ranchera products are?

14 A. In Columbia?

15 Q. In Columbia.

16 A. Approximately, eight hundred thousand
17 million for Zenu and three hundred thousand
18 million for Ranchera.

19 Q. Do you mean eight hundred million for
20 Zenu?

21 A. Eight hundred thousand million pesos
22 for Zenu and approximately three hundred thousand
23 million pesos for Ranchera.

24 Q. Do you by any chance know what those
25 numbers are in US dollars?

1 L. Salazar

2 A. Approximately, three hundred million
3 for Zenu and a hundred million Ranchera.

4 Q. Thank you.

5 MR. RAYMOND: I would just like to
6 make a comment. I believe we produced this
7 information pursuant to the confidentiality
8 agreement in this case and for the moment I
9 would like to deem this entire deposition
10 transcript covered by that until we
11 determine what may or may not need to be
12 retained as confidential.

13 MR. INGBER: Absolutely.

14 BY MR. INGBER:

15 Q. Do you know if there had been -- do
16 you know if sales of Zenu and Ranchera products in
17 Columbia have increased?

18 MR. RAYMOND: Since when?

19 MR. INGBER: On a yearly basis.

20 A. They fluctuate. Some years it
21 increases and others it doesn't.

22 Q. Do you know if -- has it increased in
23 2017, to your knowledge?

24 A. I don't remember the exact numbers.

25 Q. Do you know if it's increased in the

1 L. Salazar

2 year 2018?

3 A. Not Zenu.

4 Q. Do you agree that Latinfood has no
5 impact on Industria's sales of Ranchera and Zenu
6 in Columbia?

7 MR. RAYMOND: I warn you to answer
8 that only if you know. Please don't
9 speculate.

10 A. I don't know.

11 Q. Who would know?

12 A. I don't know.

13 Q. Now I would like you to turn to
14 paragraph 83 of LS B page 24. It says in this
15 paragraph that "Those that engage with the
16 Latinfood sales representatives are led to believe
17 they are buying products from the same source as
18 Industria's products from Columbia."

19 Do you have any knowledge of this, of
20 the accuracy of this statement?

21 A. This relies on Gloria Moreno's report.

22 Q. One person's report demonstrates this
23 to you and proves this; is that correct?

24 A. This is the information that we have.

25 Q. So Gloria Moreno is the source for

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